

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DANIEL WHALEN,

Docket #: 13 Civ. 3784 (LGS)

Plaintiff(s),

COMPLAINT

-against-

**PLAINTIFF DEMANDS
TRIAL BY JURY**

CSX TRANSPORTATION, INC.,

Defendant(s).

-----X

Plaintiff, by his attorney, PHILIP J. DINHOFER, LLC, complaining of the defendant, respectfully shows to this Court and alleges:

AS AND FOR A FIRST CAUSE OF ACTION

1. The action herein arises under the Federal Employers' Liability Act (45 U.S.C. Sec. 51, et seq.).
2. Upon information and belief and at all times herein mentioned, the defendant, CSX TRANSPORTATION, INC., was and still is a foreign corporation engaged in interstate commerce by rail that operates a railroad system and railroad yards within the jurisdiction of this Court and in various other States and maintains its executive offices at 500 Water Street, J150, Jacksonville, Florida, 32202, offices at One Bells Crossing Road, Selkirk, NY 12158, and local offices at Oak Point Yard, 1090 Longwood Ave., Bronx, New York, 10474.
3. Upon information and belief and at all times herein mentioned, the defendant had been and still is doing business in the County of The Bronx, State of New York, within the jurisdiction of this Court and in various other states.

4. At all times herein mentioned, the defendant was and still is a common carrier by rail engaged in interstate commerce between different states in the United States.

5. That prior to November 8, 2011 and at all times hereinafter mentioned the defendant employed the plaintiff, DANIEL WHALEN, as a Lead Carman under its direction, supervision and control and in furtherance of its business in interstate commerce.

6. That on and prior to November 8, 2011, and at all times hereinafter mentioned, the defendant maintained and controlled railroad operations in Bronx, New York, more particularly known as the Car Department Office, Oak Point Yard, 1090 Longwood Avenue, Bronx, New York, which included the tracks, rails, platforms, switches, sidings, roadbeds and appurtenances thereto, over through and upon which the defendant operated its engines, trains and cars under its direction and control.

7. That the defendant was under a duty to keep its premises aforementioned in a safe condition and free from any and all hazards, as well as a duty to provide the plaintiff with a safe work place and/or safe tools, equipment and/or personnel with which to work.

8. That on or about November 8, 2011, while the plaintiff, as an employee of the defendant, was in the performance of his duties as a Lead Carman at or near the aforesaid location, he was caused to sustain severe and disabling injuries as a result of the negligence, carelessness and recklessness of the defendant in failing to provide him with a safe place to work and/or safe tools, equipment and/or personnel with which to work, as hereinafter set forth.

9. That the said accident and resulting injuries to the plaintiff were caused solely by reason of the negligence, carelessness and recklessness of the defendant, its agents, servants and/or employees' in failing to exercise due care and diligence; in failing to provide plaintiff with a safe place to work and/or safe tools, equipment and/or personnel with which to work; in

failing to promulgate safety rules and procedures for activities carried out by their personnel at the aforesaid place; in failing to warn plaintiff of the existence of the dangers involved in the performance of his duties as a Lead Carman; in failing to provide the plaintiff with the necessary and proper tools, equipment and/or personnel with which to work; in failing to make proper and adequate provisions for the safety of plaintiff; in that the defendant failed to promulgate and enforce proper and safe rules for the safe conduct of the work operations of the railroad and the defendant was otherwise generally negligent under the circumstances.

10. That the said injuries were incurred while the plaintiff was acting in furtherance of interstate commerce, or in work substantially affecting the same.

11. That the plaintiff, DANIEL WHALEN was damaged thereby in the sum of TEN MILLION (\$10,000,000.00) DOLLARS.

WHEREFORE, plaintiff, DANIEL WHALEN, demands judgment against the defendant, CSX TRANSPORTATION, INC., in the sum of TEN MILLION (\$10,000,000.00) DOLLARS together with the costs and disbursements of this action.

Dated: Rockville Centre, New York
June 1, 2013

Philip J. Dinhofer

By: Philip J. Dinhofer, #6940
PHILIP J. DINHOFER, LLC
Attorneys for Plaintiff(s)
77 N. Centre Ave. - Suite 311
Rockville Centre, NY 11570
516-678-3500